October 31, 2002

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: **Ex Parte notice**: In the Matter of Performance Measurements and Standards for Interstate Special Access Services (CC Docket No. 01-321)

Dear Ms. Dortch:

On October 30, 2002 Whit Jordan of BellSouth, John Kure of Qwest, Dee May and Sherry Ingram of Verizon, and the undersigned of SBC met with Bill Maher, John Stanley, and Michelle Carey of the Wireline Competition Bureau.

The fundamental question in the NPRM is "whether the Commission should adopt a select group of measurements and standards for evaluating ILEC performance in the provisioning of special access services." Although the Commission has conducted a detailed and thorough investigation of this question, the parties noted that there still is no evidence that regulations are needed.

ILEC performance in provisioning special access services is very good. Even the Joint Competitive Industry Group admits that "[s]ince 1998, every Tier 1 ILEC has reported On Time Performance above 90% and 4 of the 6 have reported at least one year in which they exceeded 95%." And ILECS have submitted additional performance statistics in this docket that demonstrate further that ILEC performance is good. Although JCIG members and others complain generally that, even though they themselves should not have to file performance data, they need performance measures from ILECs to ensure good performance, they offer no real explanation of why current market conditions and FCC enforcement procedures are not sufficient to achieve these goals. As we explained, clearly they are, particularly under the watchful eye of this Commission.

First, ILECs already engage in informal and negotiated performance reporting with their special access customers. In contrast to uniform performance metrics, which fail to account for unique customer needs and variances in ILEC systems and service areas, these reports are tailored to specific customer requests for information and more accurately reflect the ILEC's performance for that customer in the markets of interest to that customer. In addition, ILEC tariffs already credit customers for missed appointments and service outages. Mandatory reporting requirements will only eliminate these incentives to cooperatively develop flexible solutions. And the risk in attempting to

achieve uniformity is that the metrics become so divorced from what they are intended to reflect that they prove utterly useless as a real, enforceable measure of any particular ILEC's provisioning performance.

Second, the Commission already has in place sufficient enforcement procedures to ensure that special access provisioning performance and practices remain just, reasonable, and non-discriminatory. Using the information they receive through informal and negotiated reporting and through subsequent discovery, carriers can file informal and formal complaints, request Commission assisted mediation, and seek expedited proceedings and rulings in the Enforcement Bureau's Market Disputes Resolution Division. In what is without question a competitive market, the Commission's Enforcement Bureau remains the best and most appropriate forum for addressing carrier to carrier disputes. Regulatory intervention is not appropriate.

Finally, we reiterated two fundamental principles of fairness the Commission must apply should it decide to require some performance reporting. First, we explained that there should be no automatic penalties associated with any performance reporting. To do so would exceed the Commission's authority under Section 503, which requires that the Commission first issue a notice of apparent liability and provide an opportunity for hearing, and would deprive reporting carriers of their constitutional right to due process. Second, and most importantly, we explained that any reporting requirements must apply to all facilities-based providers of special access services. Imposing asymmetric reporting requirements would unreasonably burden one group of providers, increasing their costs while diminishing their ability to compete, and would distort competition by leading consumers to draw potentially inaccurate inferences about industry performance as a whole. Not only is such a scheme of questionable legality in a competitive market, it is inconsistent with the Commission's goals of promoting competitive facilities-based competition.

In short, the ILECs recognize that special access services are important to their customers, and they have responded with good service, voluntary general assurances, and flexible negotiated arrangements. Regimented uniformity and regulatory intervention, especially any that would be apply only to ILECs, are not warranted.

This notice is being filed pursuant to Section 1.1206(b)(2) of the Commission's rules. Please place this in the public record.

Sincerely,

-s-

Albert M. Syeles

CC: Bill Maher
Michelle Carey
John Stanley
Uzoma Onyeije